

Appl. No. 09/829,168  
Atty. Docket No. P116RC  
Amdt. dated November 30, 2006  
Reply to Office Action of November 3, 2006  
Customer No. 27752

### REMARKS

In summary, in the Decision on Appeal, the rejections of Claims 1, 3-6 and 9-12 were sustained. Claims 7 and 8 would be allowable if re-written in independent form. Claim 2 and Claims 13-36 were previously canceled.

The Applicant has not amended Claims 7 and 8 at this time. The Applicant has amended Claims 1 and 10. Therefore, Claims 1 and 3 - 12 are currently pending.

The Applicant respectfully requests reconsideration of the pending claims.

#### Claim Amendments and Arguments Based on Decision on Appeal

(A) Claims 1, 3-5, and 9 stand rejected under 35 USC § 102(b) as anticipated by the grandparent application 09/163,778, and natural beagle milk. The obviousness portion of the rejection was reversed.

Claim 1 has been amended to include a fructooligosaccharide. Claim 1, as amended, is not anticipated by natural beagle milk, as natural beagle milk does not contain fructooligosaccharides. Therefore, the Applicant respectfully requests the rejection be withdrawn.

(B) Rejection of Claims 7-9, 11, and 12; (C) Rejection of Claim 6; and (D) Rejection of Claim 10; all for obviousness under 35 USC § 103(a) in view of the grandparent application were therefore also reversed.

(E) Claims 1 and 9 stand rejected under 35 USC § 102(b) as anticipated by or alternatively under 35 USC § 103(a) as obvious in view of EP 0,259,713 to Meyer (hereinafter "Meyer").

With respect to the anticipation rejection; Claim 1 has been amended and contains elements not disclosed by Meyer, namely fructooligosaccharide. Therefore Claim 1 is not anticipated by Meyer. As Claim 9 depends from Claim 1, Claim 9 is therefore also not

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anticipated by Meyer. Thus, the Applicant respectfully requests that the rejections be withdrawn.

With respect to the obviousness rejection; Meyer does not teach or suggest, either implicitly or explicitly, any reason, motivation, or expectation of success for adding fructooligosaccharide to a milk substitute product. For an obviousness rejection to stand, there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference. Secondly, there must be a reasonable expectation of success. Finally, the cited reference must teach or suggest *all* the claim limitations. See for example, In re Vaeck, 947 F.2d 488 (Fed. Cir. 1991). Clearly Meyer does not even contemplate any need, benefit or expectation of success for adding fructooligosaccharide to a milk substitute product and thus does not teach or suggest all the claim limitations. Therefore, the present invention, as recited in Claims 1 and 9 is not obvious in view of Meyer, and the Applicant respectfully requests that the rejection be withdrawn.

(F) Claims 3-5, 11, and 12 stand rejected under 35 USC § 103(a) as being obvious in view of Meyer. Claims 3-5, 11, and 12 all depend from Claim 1 which is not obvious over Meyer for the reasons noted above in the argument in section (E). As noted above, Meyer does not teach or suggest, either implicitly or explicitly, any reason, motivation, or expectation of success for adding fructooligosaccharide to a milk substitute product. Therefore, Meyer does not teach or suggest all of the claim limitations of Claims 3-5, 11 and 12. Thus, the Applicant respectfully requests withdrawal of the rejection.

(G) Claim 6 stands rejected under 35 USC § 103(a) as being obvious over Meyer, further in view of US Patent No. 5,709,888 to Gil (hereinafter "Gil"). Claim 6 depends from Claim 1 which is not obvious over Meyer for the reasons noted above in the argument in section (E). As noted above, Meyer does not teach or suggest, either implicitly or explicitly, any reason, motivation, or expectation of success for adding fructooligosaccharide to a milk substitute product. Therefore, Meyer does not teach or suggest all of the claim limitations of Claim 6. Furthermore, Gil also does not teach or disclose adding any type of fructooligosaccharide to an infant formula. Therefore, even assuming *arguendo* that the teachings of Gil regarding various fats and fat levels, could

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be combined with Meyer, one might arrive at an infant formula with particular levels of fats, but one would not arrive at the present invention. Therefore, the Applicant respectfully requests that the rejection be withdrawn.

(H) Claim 10 stands rejected under 35 USC § 103(a) as being obvious over Meyer in view of US patent No. 5,294,458 to Fujimori (hereinafter "Fujimori"). As noted above, Meyer does not teach or suggest, or provide any motivation for, adding any type of fructooligosaccharide to a milk substitute product. Claims 1 and 10 as amended both recite a fructooligosaccharide.

Fujimori, on the other hand, is not even directed to a milk substitute product. Fujimori only discloses appropriate additives for dry type, semi-moist soft dry type and wet type foods, each of which is defined at column 2, lines 3-17, and none of which includes a liquid food. Fujimori spends a good deal of discussion describing and distinguishing the various types of foods. Although powdered milk is disclosed, no description or discussion of any liquid product is provided.

Secondly, while Fujimori does discuss various oligosaccharides starting at column 2, line 39 through column 3, line 29, in that discussion Fujimori goes to great lengths to differentiate the chosen oligosaccharide, lactosucrose, from oligosaccharides generally. Fujimori demonstrates that all oligosaccharides are not equal in function or benefit to an animal. See particularly column 1, lines 58-60 wherein it is introduced that the invention of Fujimori comprises lactosucrose having *distinctive characteristics superior to fructooligosaccharide*... Thus, all oligosaccharides are specifically not considered by Fujimori to be equal or interchangeable.

In addition, at column 2, lines 26-38, Fujimori also points out that different levels of even the same oligosaccharide produce different, often non-optimal results. Fujimori explains that several experiments were done to arrive at the desired, beneficial levels of a particular oligosaccharide, lactosucrose, for particular types of foods. Therefore, finding optimal levels of optimal oligosaccharides would not involve merely routine experimentation or optimization. Fujimori does not discuss or provide any information or insight as to what levels of any other oligosaccharide might be usable, as other oligosaccharides were deemed inferior to lactosucrose for use in the particular types of foods contemplated by Fujimori.

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Thus, Fujimori specifically does not provide the requisite motivation to use a fructooligosaccharide in a milk substitute product. In fact, Fujimori teaches away from use of fructooligosaccharides in pet food products as being inferior to lactosucrose. Therefore, considering the cited documents together one does not find the requisite teaching, suggestion, motivation, or expectation of success for combining the documents, nor does one find all of the claim limitations of the present invention. Even assuming *arguendo* that Meyer could be combined with Fujimori, one might arrive at a milk substitute product containing lactosucrose, but neither document, either alone or in combination, provides the Applicant's invention as recited in the Claims, as amended. Therefore, the Applicant respectfully requests that the rejection be withdrawn.

#### Conclusion

In light of the above remarks and amendments, it is requested that the Examiner reconsider and withdraw the rejections. Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied documents. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of all pending Claims is respectfully requested.

Respectfully submitted,

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By   
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